

EMPLOYMENT APPEALS BOARD DECISION
2022-EAB-0687

Reversed & Remanded

PROCEDURAL HISTORY: On December 17, 2021, the Oregon Employment Department (the Department) served a Notice of Determination for Pandemic Unemployment Assistance (PUA) concluding that claimant was not entitled to receive PUA benefits effective December 27, 2020. On January 6, 2022, the PUA determination became final without claimant having filed a request for hearing. On January 13, 2022, claimant filed a late request for hearing. ALJ Kangas considered claimant's request, and on April 11, 2022 issued Order No. 22-UI-191041, dismissing the request as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by April 25, 2022. On May 2, 2022, claimant filed a late response to the appellant questionnaire and a timely application for review of Order No. 22-UI-191041 with the Employment Appeals Board (EAB). On June 9, 2022, ALJ Kangas mailed a letter stating that because claimant's response to the appellant questionnaire was late, it would not be considered, another order would not be issued, and Order No. 22-UI-191041 remained in effect. This matter comes before EAB based upon claimant's May 2, 2022 application for review of Order No. 22-UI-191041.

EVIDENTIARY MATTER: EAB has considered additional evidence when reaching this decision under OAR 471-041-0090(1) (May 13, 2019). The additional evidence is claimant's response to the appellant questionnaire, has been marked as EAB Exhibit 1, and a copy provided to the parties with this decision. Any party that objects to our admitting EAB Exhibit 1 must submit such objection to this office in writing, setting forth the basis of the objection in writing, within ten days of our mailing this decision. OAR 471-041-0090(2). Unless such objection is received and sustained, the exhibit(s) will remain in the record.

FINDINGS OF FACT: (1) On December 17, 2021, the Department mailed the PUA determination to claimant's address on file with the Department. The PUA determination decision stated, "You have the right to appeal this decision if you do not believe it is correct. Your request for appeal must be received no later than January 6, 2022." Exhibit 1 at 2.

(2) Prior to January 12, 2022, claimant contracted COVID-19. Due to their illness and their concern over potentially spreading the COVID-19 virus to another individual if they went to retrieve their own mail, claimant coordinated with their mother to have their mother retrieve their mail.

(3) On January 12, 2022, claimant received the December 17, 2021 PUA determination. On January 13, 2022, claimant requested a hearing on the PUA determination.

CONCLUSIONS AND REASONS: Order No. 22-UI-191041 is set aside and this matter remanded for a hearing on whether claimant's late request for hearing on the December 17, 2021 PUA determination should be allowed and, if so, the merits of that decision.

ORS 657.269 provides that the Department's decisions become final unless a party files a request for hearing within 20 days after the date the decision is mailed. ORS 657.875 provides that the 20-day deadline may be extended a "reasonable time" upon a showing of "good cause." OAR 471-040-0010 (February 10, 2012) provides that "good cause" includes factors beyond an applicant's reasonable control or an excusable mistake, and defines "reasonable time" as seven days after those factors ceased to exist.

On December 17, 2021, the Department mailed notice of the December 17, 2021 PUA determination to claimant's address of record on file with the Department. The 20-day deadline for claimant to file a timely request for hearing on the PUA determination was January 6, 2022. Claimant did not file a request for hearing until January 13, 2022. As such, claimant's request for hearing was late.

However, claimant's response to the appellant questionnaire shows that claimant may have had good cause to extend the 20-day filing deadline. Claimant indicated in their response that they had contracted COVID-19 during the relevant time period and, in an attempt to prevent any spread of the virus to others, they arranged to have their mother pick up their mail. EAB Exhibit 1 at 2. If claimant's late request for hearing resulted from their COVID-19 illness and the corresponding challenges that the illness caused them with respect to retrieving their mail, claimant's failure to meet the January 6, 2022 filing deadline may have been the result of a factor beyond claimant's reasonable control.

On remand, further inquiry is needed to determine the specific timeframe that claimant both had COVID-19 and also relied upon their mother to retrieve their mail. Likewise, inquiry should address the specifics of the mail retrieval process claimant set up with their mother to include the schedule claimant's mother maintained in retrieving claimant's mail, such as whether claimant's mother retrieved claimant's mail every day or pursuant to some other consistent schedule and, if so, what that schedule was. Likewise, inquiry should address whether the January 12, 2022 date that claimant received the December 17, 2021 PUA determination was the same date that claimant's mother retrieved it. If claimant's mother retrieved the decision on an earlier date and no circumstance beyond claimant's reasonable control prevented claimant from becoming aware of the decision on that date, further inquiry should address whether claimant filed their request for hearing within a reasonable time after their mother had retrieved the PUA determination.

Because further development of the record is necessary to determine whether claimant's late request for hearing on the December 17, 2021 PUA determination should be allowed and, if so, the merits of that decision, Order No. 22-UI-191041 is reversed, and this matter is remanded.

DECISION: Order No. 22-UI-191041 is set aside, and this matter remanded for further proceedings consistent with this order.

D. Hettle and A. Steger-Bentz;
S. Serres, not participating.

DATE of Service: July 1, 2022

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Order No. 22-UI-191041 or return this matter to EAB. Only a timely application for review of the subsequent order will cause this matter to return to EAB.

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Understanding Your Employment Appeals Board Decision

English

Attention – This decision affects your unemployment benefits. If you do not understand this decision, contact the Employment Appeals Board immediately. If you do not agree with this decision, you may file a Petition for Judicial Review with the Oregon Court of Appeals following the instructions written at the end of the decision.

Simplified Chinese

注意 – 本判決會影響您的失業救濟金。如果您不明白本判決，請立即聯繫就業上訴委員會。如果您不同意此判決，您可以按照該判決結尾所寫的說明，向俄勒岡州上訴法院提出司法複審申請。

Traditional Chinese

注意 – 本判決會影響您的失業救濟金。如果您不明白本判決，請立即聯繫就業上訴委員會。如果您不同意此判決，您可以按照該判決結尾所寫的說明，向俄勒岡州上訴法院提出司法複審申請。

Tagalog

Paalala – Nakakaapekto ang desisyong ito sa iyong mga benepisyo sa pagkawala ng trabaho. Kung hindi mo naiintindihan ang desisyong ito, makipag-ugnayan kaagad sa Lupon ng mga Apela sa Trabaho (Employment Appeals Board). Kung hindi ka sumasang-ayon sa desisyong ito, maaari kang maghain ng isang Petisyon sa Pagsusuri ng Hukuman (Petition for Judicial Review) sa Hukuman sa Paghahabol (Court of Appeals) ng Oregon na sinusunod ang mga tagubilin na nakasulat sa dulo ng desisyon.

Vietnamese

Chú ý - Quyết định này ảnh hưởng đến trợ cấp thất nghiệp của quý vị. Nếu quý vị không hiểu quyết định này, hãy liên lạc với Ban Kháng Cáo Việc Làm ngay lập tức. Nếu quý vị không đồng ý với quyết định này, quý vị có thể nộp Đơn Xin Tái Xét Tư Pháp với Tòa Kháng Cáo Oregon theo các hướng dẫn được viết ra ở cuối quyết định này.

Spanish

Atención – Esta decisión afecta sus beneficios de desempleo. Si no entiende esta decisión, comuníquese inmediatamente con la Junta de Apelaciones de Empleo. Si no está de acuerdo con esta decisión, puede presentar una Aplicación de Revisión Judicial ante el Tribunal de Apelaciones de Oregon siguiendo las instrucciones escritas al final de la decisión.

Russian

Внимание – Данное решение влияет на ваше пособие по безработице. Если решение Вам непонятно – немедленно обратитесь в Апелляционный Комитет по Трудоустройству. Если Вы не согласны с принятым решением, вы можете подать Ходатайство о Пересмотре Судебного Решения в Апелляционный Суд штата Орегон, следуя инструкциям, описанным в конце решения.

Khmer

ចំណុចសំខាន់ – សេចក្តីសម្រេចនេះមានផលប៉ះពាល់ដល់អត្ថប្រយោជន៍គ្មានការងារធ្វើរបស់លោកអ្នក។ ប្រសិនបើលោកអ្នកមិនយល់អំពីសេចក្តីសម្រេចនេះ សូមទាក់ទងគណៈកម្មការឧទ្ធរណ៍ការងារភ្លាមៗ។ ប្រសិនបើលោកអ្នកមិនយល់ស្របចំពោះសេចក្តីសម្រេចនេះទេ លោកអ្នកអាចដាក់ពាក្យប្តឹងសុំឲ្យមានការពិនិត្យរឿងក្តីឡើងវិញជាមួយតុលាការឧទ្ធរណ៍រដ្ឋ Oregon ដោយអនុវត្តតាមសេចក្តីណែនាំដែលសរសេរនៅខាងចុងបញ្ចប់នៃសេចក្តីសម្រេចនេះ។

Laotian

ເອົາໃຈໃສ່ – ຄຳຕັດສິນນີ້ມີຜົນກະທົບຕໍ່ກັບເງິນຊ່ວຍເຫຼືອການຫວ່າງງານຂອງທ່ານ. ຖ້າທ່ານບໍ່ເຂົ້າໃຈຄຳຕັດສິນນີ້, ກະລຸນາຕິດຕໍ່ຫາຄະນະກຳມະການອຸທອນການຈ້າງງານໃນທັນທີ. ຖ້າທ່ານບໍ່ເຫັນດີນຳຄຳຕັດສິນນີ້, ທ່ານສາມາດຍື່ນຄຳຮ້ອງຂໍການທົບທວນຄຳຕັດສິນນຳສານອຸທອນລັດ Oregon ໄດ້ ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄຳຕັດສິນນີ້.

Arabic

هذا القرار قد يؤثر على منحة البطالة الخاصة بك، إذا لم تفهم هذا القرار، إتصل بمجلس منازعات العمل فوراً، و إذا كنت لا توافق على هذا القرار، يمكنك رفع شكوى للمراجعة القانونية بمحكمة الإستئناف بأوريغون و ذلك بإتباع الإرشادات المدرجة أسفل القرار.

Farsi

توجه - این حکم بر مزایای بیکاری شما تاثیر می گذارد. اگر با این تصمیم موافق نیستید، بلافاصله با هیأت فرجام خواهی استخدام تماس بگیرید. اگر از این حکم رضایت ندارید، می‌توانید با استفاده از دستور العمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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